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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs

Summary

The present report on the situation of human rights in Libya and related technical support and capacity-building needs is submitted pursuant to Human Rights Council resolution 25/37 of 28 March 2014.

Libya is facing the worst political crisis and escalation of violence since the 2011 armed conflict. Two parliaments and governments claim legitimacy, while powerful armed groups exercise effective control on the ground, committing violations of international human rights and humanitarian law with impunity. The justice system continues to be attacked and is no longer functioning in parts of the country. In this context, the provision of technical assistance has been significantly disrupted. However, some State institutions and civil society organizations are still functioning to varying degrees and require assistance.

The report gives an overview of the human rights situation in Libya and of the technical assistance provided to support key institutions and civil society actors. It contains recommendations to address the protection of civilians, improve the administration of justice and support legal reform, transitional justice and national institutions.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 25/37 of 28 March 2014. It was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). The figures in the report are best estimates based on information received from members of the United Nations Country Team in Libya and other sources. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues to provide support to the human rights mandate of UNSMIL. The Director of UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner in Libya.

II. Background

2. Since the High Commissioner's last report to Council (A/HRC/25/42), the human rights and humanitarian situation in Libya has deteriorated amidst escalating violence and an increasingly volatile political environment. In March 2014, following controversy over the expiry date of the term of the parliament — the General National Congress —, an agreement was reached to amend the Constitutional Declaration to hold national elections on 25 June to create a new parliament — the House of Representatives. The House was to convene in Benghazi in accordance with the amended Constitutional Declaration, but in the light of the security situation, its first meeting was convened in Tobruk on 4 August 2014, and has remained there since. In February 2014, separate nation-wide elections were held for a Constitution Drafting Assembly, which was established in the town of Al-Baida and held its first meeting on 21 April.

3. In mid-May 2014, in Benghazi, General Khalifa Haftar launched Operation Dignity (*karama*) against the Benghazi Revolutionaries Shura Council, an alliance comprising Ansar al-Shari'a, Libya Shield units and other armed groups. Fierce fighting has continued since then. The Shura Council initially gained control of most of the city. Fighting in Benghazi intensified in mid-October 2014, following a renewed offensive by General Haftar's forces — the Libya National Army —, which appeared to have gained control of sizeable areas of Benghazi by December 2014.

4. Tripoli witnessed six consecutive weeks of heavy fighting from mid-July 2014, when an alliance of armed groups, primarily from Misrata, but also from other towns, including Al-Zawiya and Gheryan, and Tripoli-based armed groups launched Operation Libya Dawn (*fajr Libya*) against the Zintan-affiliated Al-Qa'qa' and Al-Sawai'q armed groups allied with fighters from the Warshafana region, west of Tripoli. The fighting was particularly intense around Tripoli International Airport, but affected other large areas of Tripoli. On 24 August 2014, Libya Dawn fighters seized control of the airport and other areas of Tripoli from Zintan-affiliated armed groups, which withdrew from the city. Libya Dawn operations were extended to the Warshafana region until Libya Dawn gained control over the region. Fighting then broke out in the Nafusa Mountains when Zintan-affiliated armed groups attacked the towns of Kikla and Al-Qala'a. At the time of writing, intermittent fighting was ongoing in the Nafusa Mountains and air strikes against Mitiga Airport and other areas in the west of the country had been carried out by the air force aligned with General Haftar.

5. Sporadic fighting also erupted throughout the year in southern Libya around the towns of Sabha, Kufra and Awbari, involving Arab, Tabu and Tuareg armed groups, many allied with either the Dignity or Libya Dawn camps.

6. Following Libya Dawn's takeover of Tripoli at the end of August 2014, the Government, led by incumbent Prime Minister Abdullah al-Thinni, left Tripoli and moved to the town of Al-Baida. The House of Representatives subsequently confirmed Mr. Al-Thinni as Prime Minister. In Tripoli, the General National Congress reconvened and established its own government, led by Omar al-Hasi, which gradually took control of Tripoli-based ministries and other State institutions. On 6 November, the Supreme Court declared unconstitutional a provision of the March 2014 constitutional amendment which had paved the way for elections to create the House of Representatives.

7. Hundreds of armed groups, comprising more than 200,000 fighters, continue to be paid from central State funds. Some are nominally affiliated with either the Ministry of Defence or the Ministry of the Interior. Those groups exercise effective control in localized areas and over detention centres, where thousands of persons associated with the former regime, among others, continue to be detained outside of the effective oversight of the authorities.

8. UNSMIL/OHCHR continues to monitor and report on the human rights situation in Libya, despite the relocation of UNSMIL international staff outside of Libya in mid-July 2014. UNSMIL has repeatedly called on all armed groups to desist from violations of international human rights and humanitarian law and abuses of human rights. Joint reports on the situation were issued by OHCHR and UNSMIL on 4 September 2014[1] and 23 December 2014.[2] However, interlocutors are often reluctant to talk about human rights abuses out of fear of retaliation by armed groups. That climate and the continuing violence and political crisis have severely impacted the delivery of technical assistance by UNSMIL/OHCHR and others. In some cases, such assistance had to be reconfigured or suspended.

9. On 27 August 2014, the Security Council adopted resolution 2174 (2014), in which it decided that travel ban or asset freeze measures would be applied to individuals or entities "engaging in or providing support for other acts that threaten the peace, stability or security of Libya", including "planning, directing, or committing, acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Libya" (para. 4).

10. Libya is a party to the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. It has also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Libya is also a party to the African Charter on Human and Peoples' Rights, but has not yet ratified, inter alia, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, or the 1951 Convention relating to the Status of Refugees and its Protocol. In 2013, Libya ratified the Convention

[1] See www.ohchr.org/documents/countries/ly/overviewviolationslibya_unsmil_ohchr_sept04_en.pdf.

[2] See www.ohchr.org/Documents/Countries/LY/UNSMIL_OHCHRJointly_report_Libya_23.12.14.pdf.

on the Rights of Persons with Disabilities, but it has not yet deposited the instrument of ratification.

III. Human rights priorities and technical support needs

A. Protection of civilians

1. Indiscriminate shelling and other violations of international humanitarian law

11. Indiscriminate attacks by all sides in densely populated areas have been frequently reported, resulting in civilian casualties in Tripoli, Benghazi, Warshafana, the Nafusa Mountains and other areas. While the precise number of casualties is not known, hundreds are reported to have been killed. Land mines were reportedly used in the Tripoli International Airport area and explosive remnants of war are a major hazard for civilians.

12. Armed groups have been using a variety of weapons, including small arms, rockets, mortars, anti-aircraft guns, tanks and air attacks. Many of the weapons used are unreliable because they are old and poorly maintained, with inaccurate aiming systems and faulty ammunition. Fighters have received little training and do not operate with the appropriate discipline, command and control systems. Those factors have contributed to the indiscriminate nature of many attacks.

13. There have been frequent power, fuel and food shortages and a breakdown in basic health and education services.

14. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that the violence has led to the internal displacement of nearly 400,000 persons between May and November 2014.[3]

15. Civilian infrastructure in Benghazi, Tripoli and other parts of Libya has been damaged extensively by the fighting. Armed groups affiliated with different camps have also engaged in the deliberate destruction of civilian property belonging to their perceived opponents in Benghazi, Tripoli and Warshafana, including through the use of bulldozers.

16. Several hospitals were hit, including Tripoli Al-Afya Hospital and Tripoli Central Hospital, during July and August 2014. In September, a hospital in Al-Zawiya was also hit and Al-Zahra hospital in the Warshafana area was reportedly looted and burned. In Benghazi, the Hawari General Hospital suspended operations due to the fighting, and Ansar al-Shari'a temporarily occupied Al-Jalaa hospital and reportedly shelled a wing of the Benghazi Medical Centre, setting off a fire in December. Reports were also received of the obstructed evacuation of injured persons and of impeded humanitarian assistance, as well as of the misuse of medical vehicles for military purposes.

2. Summary executions, abductions, torture and other ill-treatment

17. Throughout 2014, UNSMIL/OHCHR received reports of summary executions by targeted assassination, car bombs and beheadings. Human rights defenders, civil society activists and media professionals, as well as members of the judiciary and law enforcement officers, were among the victims, amidst the increasing violence. In November, footage of the beheading of several people, apparently in Benghazi and Derna, were circulated on social media.

[3] See www.unhcr.org/5465fdb89.html.

18. The escalation in violence in 2014 also increased the number of persons deprived of their liberty by armed groups. In addition to fighters belonging to rival armed groups, UNSMIL/OHCHR received reports of civilians being abducted solely for their actual or suspected tribal, family, political or religious affiliation and nationality. A significant proportion of victims interviewed by UNSMIL/OHCHR reported that they had been subjected to torture and other ill-treatment during abduction. People abducted have been either unlawfully detained in official detention facilities or in makeshift facilities which are not officially recognized. Many people remain missing since the time of their abduction.

19. In western Libya, abductions were carried out by armed groups belonging to or allied with Libya Dawn, as well as those from Warshafana and Zintan. Libya Dawn fighters have continued to search for and abduct people, following their takeover of Tripoli. Armed groups from Zintan and Warshafana abducted travellers and other people from Gheryan, Misrata, Nalut, Tripoli and Al-Zawiya. Many were held in captivity until they were exchanged for other abductees.

20. In eastern Libya, armed groups affiliated with Operation Dignity abducted dozens of men in areas under their control, including on the basis of their political affiliation or nationality. Some of those abducted were allegedly tortured in several detention centres before being taken to Gernada prison near Al-Baida. In October 2014, the Benghazi Revolutionaries Shura Council moved over 130 inmates from Buhdeima military prison to an unknown destination and stated that they were going to be tried in accordance with sharia.

B. Groups in focus

1. Women

21. There were numerous incidents of violence against women during 2014. In the lead-up to the February 2014 elections for the Constitution Drafting Assembly, UNSMIL/OHCHR received reports of threats and attacks against female candidates, which contributed to their reluctance to run for election, and staff observed posters of female candidates being torn down. On 25 June, prominent human rights defender Salwa Bughaigis was shot dead in her Benghazi residence, after casting her vote in elections for the House of Representatives. On 17 July, former member of the General National Congress Fariha Barkawi was assassinated in Derna.

22. Several women activists reported that they had been pressured to abandon their public roles. One human rights defender reported that she had received several telephone calls from armed groups warning that if she continued writing about women's rights, she and her children would be killed. She and her family have since left the country. Another human rights defender and lawyer who had taken part in a public debate on women's rights received anonymous telephone calls and text messages warning her that she would be abducted and killed.

23. Libyan women also face discrimination in personal status and other matters, such as polygamy, prohibition to travel without a male guardian and the inability to pass on their nationality to their children or spouses. Civil society activists have raised these as key issues to be addressed in the constitution drafting process.

24. UNSMIL is in regular contact with women's rights defenders and has organized several workshops to build their capacity. UNSMIL has also provided technical advice to strengthen women's participation in areas such as the political process and constitution drafting.

25. The present report also addresses the efforts of the Libyan authorities to provide support to women and men victims of sexual violence.

2. Children

26. UNSMIL/OHCHR received reports of children killed or maimed as a result of the violence, victims of attacks on schools and hospitals, and affected by the denial of humanitarian access.

27. UNSMIL/OHCHR documented tens of cases of children injured or killed as a result of shelling in Tripoli and Benghazi. Children in camps housing displaced persons have also been injured as a result of the shelling. On 30 August 2014, a 15-year-old Tawerghan boy was reportedly injured during an attack on Al-Fallah camp for internally displaced persons in an area controlled by Libya Dawn. On 14 September, shelling in Al-Zawiya resulted in serious injury to two boys, aged 6 and 9, and a girl, aged 10. Other reports include the killing of at least six children in incidents of shelling or crossfire, in Benghazi.

28. Explosive remnants of war remain a major hazard for children, and civilian objects, such as schools, have been extensively damaged by shelling, limiting access to education. Schools in Benghazi, Tripoli and other places have been closed and converted into makeshift shelters for internally displaced persons. UNSMIL/OHCHR also received reports that schools in the Warshafana areas and Nafusa Mountains were being used as bases by armed groups for launching attacks.

29. UNSMIL/OHCHR closely liaised with the United Nations Children's Fund (UNICEF) in monitoring violations of the rights of children; contributing to the annual report of the Secretary-General on children and armed conflict; and reporting relevant violations to the Security Council by way of the Global Horizontal Note coordinated by the Special Representative of the Secretary-General for Children and Armed Conflict.

3. Internally displaced persons

30. Prior to the recent violence in 2014, roughly 60,000 Libyans remained internally displaced[4], mainly as a result of the 2011 conflict. Those affected included persons from Mashashiya, Gualish, Jaramla, Si'an, as well as Tabu and Tuareg communities. The inhabitants of the town of Tawergha are the largest group of internally displaced, totalling about 30,000.[5] They were forcibly displaced from their town in August 2011 by armed groups from Misrata, following allegations of grave human rights abuses committed in Misrata by pro-Qadhafi forces from Tawergha. Since then, Tawerghans have been unable to return to their town and have been subjected to continuous harassment. Some camps for internally displaced Tawerghans were located in or near areas affected by the fighting in Tripoli and Benghazi. Members of armed groups have raided camps for displaced Tawerghans, conducting unlawful killings and abductions. On 30 August, Al-Fallah camp was raided by forces affiliated with Libya Dawn: one person was reportedly killed and three were injured. Many Tawerghans have thus fled for fear of further shelling or abductions. In mid-October, 2,500 Tawerghans fled their camp in Benghazi and are staying in makeshift shelters in Ajdabiya and elsewhere. UNSMIL/OHCHR has maintained close contact with the representatives of the Tawergha community in order to monitor their situation, ensure awareness of abuses against them and address their humanitarian needs.

31. The ongoing escalation in violence led to a new wave of internally displaced persons. In mid-November 2014, UNHCR estimated that approximately 400,000 people

[4] See www.unhcr.org/538484ab9.html.
[5] Ibid.

had been internally displaced by the fighting.[6] UNSMIL/OHCHR received reports of displacement as a result of damage to residential properties through indiscriminate shelling, and of intentional destruction of residential properties, farms, factories and other businesses by armed groups targeting perceived opponents, particularly in Warshafana and in Benghazi.

4. Migrants, refugees and asylum seekers

32. Migrants, refugees and asylum seekers remain extremely vulnerable in Libya. Libya has not ratified the 1951 Convention relating to the Status of Refugees, and the authorities have not established a proper protection framework. Detention of such individuals is widespread and prolonged, particularly affecting those originating from sub-Saharan Africa. The detainees usually have no means of challenging their detention.

33. In the first half of 2014, UNSMIL/OHCHR visited various detention centres for migrants, including in Abu Salim, Al-Zawiya, Al-Tewisha, Al-Hamra, Al-Khoms, Al-Gewia, Burshada, Gatrun, Surman, Zoo Centre and Zliten. UNSMIL/OHCHR found conditions of grave concern, including chronic overcrowding, poor sanitation and health care, and insufficient food. There were also consistent reports of physical or verbal mistreatment, labour exploitation, sexual abuse, extortion and confiscation of identity documents, and minors were being detained with adults. Women detainees reported that they were subjected to sexual violence. The escalation in the violence has exacerbated the situation due to the breakdown in public services and the scarcity of basic items.

34. Migrants became even more vulnerable due to the recent violence, especially those in areas affected by the fighting, without the ability or means to leave. Many migrants have sought to flee the violence by crossing the borders into neighbouring countries, some of which have intermittently imposed strict restrictions on entry. In a visit to Zuwara in north-western Libya, in mid-August 2014, UNSMIL/OHCHR staff interviewed migrants who had fled the shelling in the Al-Krimeya neighbourhood of Tripoli and were living without adequate shelter, proper sanitary facilities, sufficient food or basic physical security, and who reported threats from Libyan border guards. Others, including women, unaccompanied children and elderly people, have sought to leave by sea routes. UNHCR estimates that approximately 130,000 people arrived in Italy from Libya between January and October 2014.[7] While many were rescued at sea by the Italian navy and other forces, over 3 000 people reportedly died at sea during that period.[8]

5. Amazigh, Tabu and Tuareg communities

35. The Amazigh, Tabu and Tuareg communities are officially referred to as "components" of Libyan society. Many within these communities consider themselves indigenous persons. The Amazigh community, as well as sizeable proportions of the Tabu and Tuareg communities, boycotted the elections for the Constitution Drafting Assembly on the grounds that the proposed decision-making procedures of the Assembly did not offer sufficient guarantees to protect their rights. In addition, they did not consider the two seats reserved for each community as adequate. However, Tabu and Tuareg communities did vote, one month later, to elect representatives.

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[6] See www.unhcr.org/5465fdb89.html.

[7] See www.refworld.org/pdfid/54646a494.pdf.

[8] See www.unhcr.org/542d12de9.html.

6. Religious minorities

36. In February 2014, the bodies of seven Egyptian Coptic Christians were found near Benghazi. Also, in February, over 30 Egyptian Copts were detained in Benghazi, allegedly tortured and asked to convert to Islam by Ansar al-Shari'a, before being released a few days later and deported to Egypt.

37. In October 2014, armed men looted and damaged the Othman Pasha Madrasa, which serves Tripoli's Sufi community. In the same month, a group of gunmen stormed and vandalized the Karamanli Mosque. Days later, attackers attempted to vandalize the Darghut Mosque, but failed when local volunteers protected the building.

7. Civil society

38. Since the outbreak of violence in mid-2014, UNSMIL/OHCHR has received reports of civil society activists in Benghazi and Tripoli being threatened, abducted, unlawfully killed or having their homes looted or burned down. Individuals have been shot in the street while going about their routine, others have been threatened through social media and text messages. In one case, an activist was abducted shortly after he had been threatened on Facebook. One prominent human rights defender received text messages warning that his children would be abducted and killed if he did not stop his advocacy work. Known activists, Tawfik Bensaud, aged 18, and Sami al-Kawafi, aged 17, were killed in Benghazi on 19 September. In Derna, Usama al-Mansuri was killed on 6 October, apparently after publicly criticizing a declaration by armed groups in the town pledging allegiance to the so-called Islamic State. As a result, numerous human rights defenders have curtailed their activism, gone into hiding or left the country.

39. UNSMIL/OHCHR is in regular contact with human rights defenders, including those who have relocated out of the country as a result of attacks and intimidation directed against them, and has sought to support them through the provision of practical advice, the facilitation of contact with local non-governmental providers of aid, and ongoing monitoring and public reporting of their situation.[9]

8. Media professionals

40. Media professionals have been subjected to increasing attacks and abductions, which has limited freedom of expression and opinion and the dissemination of information. On 26 May 2014, Muftah Abu Zeid, the editor-in-chief of *Berniq* newspaper, was killed in Benghazi. On 8 October, Al-Mu'tasem al-Warfalli, a journalist with the Libya Al-Watan radio station, was shot dead in Benghazi. Television stations Libya Al-Aseema, Al-Ahrar, Al-Dawliya and Al-Wataniya have been attacked in Benghazi and Tripoli. A journalist who used to be based in Tripoli informed UNSMIL/OHCHR that he left the country after receiving death threats as well as threats against his family on social media.

C. Administration of justice

1. Detention and conditions of detention

41. The situation of persons deprived of their liberty since the 2011 conflict remains a major concern. In October 2013, UNSMIL/OHCHR published a joint report on widespread torture, other ill-treatment and deaths of those detained in Libya.[10] According to the

[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15168.

[10] See www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf.

Ministry of Justice, as of March 2014, 6,200 people were held under its control across the country. Only 10 per cent of them had been tried and were serving prison sentences.

42. As a result of the serious security challenges faced by the authorities, progress in the judicial screening of detainees and the release of those who would not be prosecuted has been minimal despite successive deadlines set by national legislation. While, scores of detainees have been released from detention facilities in Al-Zawiya and Misrata, the vast majority continue to await judicial process.

43. UNSMIL/OHCHR is concerned that, amidst the heightened violence and political vacuum, persons held in detention are at increased risk of abuse, as it has received several reports of torture and other ill-treatment. Conditions in some facilities, such as Al-Jawiya prison in Misrata, officially under the Ministry of Justice, seem to have deteriorated, with reports of beatings and other abuses. UNSMIL also documented individual cases of torture carried out by armed groups from Warshafana and Al-Zawiya (in particular in Al-Jazira and Al-Jandubi prisons) and in Tripoli (in particular in Mitiga and Abu Salim detention centres). Three inmates were killed in unclear circumstances, allegedly during a prison riot, in Al-Sikt prison in Misrata, on 29 August. On 22 October, more than 130 detainees were removed by the Benghazi Revolutionaries Shura Council from Buhdeima military prison to an unknown location, reportedly to be tried in accordance with sharia.

44. During the course of 2014, UNSMIL/OHCHR staff visited, at least once, some 20 detention centres, mostly in western Libya, where the largest concentration of detainees is found. Through that monitoring, UNSMIL notified the authorities in control of the facilities and relevant ministries of pertinent issues and specific cases requiring attention, and made recommendations to improve the conditions of detention, in an attempt to bring them into line with international human rights standards, including the Standard Minimum Rules for the Treatment of Prisoners.

2. The Judicial Police

45. The Libyan authorities have continued to integrate members of armed groups into the Judicial Police, whose responsibilities include managing prisons, enforcing court decisions, maintaining the security of courts and apprehending fugitives. By June 2014, approximately 10,000 members had been integrated into the Judicial Police. Despite advice from UNSMIL/OHCHR on international standards relating to vetting procedures, no formal vetting process was undertaken. The Judicial Police face challenges in ensuring control over the facilities it is nominally responsible for. Many armed groups continue to retain command structures and exercise autonomous control over those facilities, even when they are formally under the authority of the Ministry of Justice.

46. While UNSMIL/OHCHR has observed that basic security has been maintained for a number of prisons, the recent violence has presented further challenges for the Judicial Police. Only about 50 per cent of Judicial Police officers are estimated to have been reporting for duty during the fighting. Prisons have also been affected by the disruption in basic services, which has led to a lack of medical supplies and scarcity of certain food items.

47. In February 2014, UNSMIL/OHCHR assisted the Judicial Police in conducting a census of detainees. For the first time since the 2011 conflict, the exercise provided the authorities with snapshot data on detainees, including their name, age, gender, charges and legal status. The census facilitated the follow-up of specific cases. UNSMIL/OHCHR further advised on the development of information management systems to ensure sustainable means of maintaining and retrieving timely data on detainees. In May, UNSMIL/OHCHR cooperated with the World Organisation Against Torture in providing capacity-building sessions on increasing prison authorities' awareness of human rights

standards. In November, it took part in a regional exchange on human rights complaint mechanisms within detention centres.

3. The judiciary and the courts

48. The deteriorating security environment has impacted heavily on the judiciary, further undermining the effective administration of justice and the process of reform. Prosecutors and judges have been frequently subjected to intimidation and attacks, in the form of court bombings, physical assaults, abduction of individuals or family members and unlawful killings. An explosion on 6 January led to the death of a police officer guarding the South Benghazi Court. Former Prosecutor General, Judge Abd al-Aziz al-Hasadi, was assassinated in Derna on 8 February. Two months later, Deputy Director General of the High Judicial Institute, Judge Kamal al-Bahari, was abducted from his office and released the following evening. The offices of the Prosecutor General and courts in central Tripoli were hit by shells on 20 August.

49. The attacks are often intended to prevent the release of members of the former regime and to thwart the arrest and prosecution of members of armed groups. Law enforcement officials and the Judicial Police do not have sufficient capacity, training or resources to ensure the security of the judiciary or to undertake effective investigations.

50. The courts in Derna, Benghazi and Sirte effectively stopped functioning since March 2014, and in Tripoli during the fighting in July and August. There has been no known prosecution of leaders or members of armed groups, despite serious and continuous human rights abuses being carried out. Social dispute-resolution mechanisms, such as councils of elders, have emerged to fill the gap created by the largely non-functioning courts, further undermining the rule of law.

51. To compound matters, on 31 August 2014, the Government announced that it had lost control of most ministries and government facilities in Tripoli, including the Ministry of Justice. UNSMIL/OHCHR subsequently received a number of reports that the archives of the ministries of Justice, Defence and the Interior, in Tripoli, had been broken into and a large number of files, including civilian criminal investigation files, were taken by fighters apparently belonging to Libya Dawn.

52. Prior to the recent violence, UNSMIL/OHCHR had advised the authorities on the need to conduct a threat assessment and adopt appropriate security plans for the protection of the courts and the judiciary, with the support of the ministries of the Interior and Defence, due to the limited capacity of the Judicial Police to confront the scale of the security challenge.

53. UNSMIL provided technical advice on an ongoing comprehensive judicial reform process to the High Judicial Institute, which trains judges and prosecutors, and the Supreme Judicial Council, which governs and administratively manages the courts and the judiciary. The process includes reform of the organization and functioning of the court system and a review of career development policies of the judiciary. In February 2014, UNSMIL and the United Nations Development Programme (UNDP) organized a study tour to Italy for members of the Council to interact with counterparts on judicial reform and security issues.

D. Legal reform

1. Penal Code and Code of Criminal Procedure

54. The Libyan Penal Code and Code of Criminal Procedure have gaps as well as provisions that are not in line with international human rights standards. In coordination with UNDP, the United Nations Office on Drugs and Crime, the Ministry of Justice, the

High Judicial Institute, academics and civil society, UNSMIL/OHCHR continued to support the review of the codes, which was initiated in 2013, in order to ensure their compliance with international human rights standards. On 5 February, the General National Congress issued Law No. 5, amending Article 195 of the Code of Criminal Procedure. The new provision punishes with imprisonment any person found to be undermining the 17 February Revolution or publicly insulting the legislative, executive or judicial authorities or disgracing the national flag. The Congress also passed Decree No. 5, authorizing relevant ministries to discontinue and prevent the broadcasting of satellite channels that are hostile to the 17 February Revolution or those which "undermine the security and stability of the country or sow discord and sedition among the Libyans." UNSMIL/OHCHR has expressed concern that such broad and vague language could be used to arbitrarily curtail freedom of expression and opinion. For instance, in November 2014, on the basis of the new provision, the Tripoli Appellate Court convicted Amara al-Khatabi, editor of *Al-Umma* newspaper, in absentia, to five years' imprisonment for allegedly defaming public officials. It also barred him from practising journalism and ordered him to pay compensation to five claimants. The sentence followed the publication of a 2012 article, in which he named more than 80 judges and prosecutors accusing them of being involved in corruption.

2. Law on Counter-terrorism

55. On 14 September 2014, the House of Representatives passed Law No. 3 of 2014 on Counter-terrorism, defining terrorism as "any use of force, threat or intimidation for the purpose of inflicting a serious harm to the public order or endangering the integrity of society, its interests and safety, when the use of force results in harming individuals or terrorizing them or endangering their life, public rights and liberties or their safety". The definition includes environmental and property offences, attacks on infrastructure, as well as obstructing or hampering public authorities, diplomatic missions and international and regional organizations and bodies in Libya. Most of the offences specified under the law are punishable by life imprisonment or other severe prison terms, although the law also refers to, but does not specify, "more severe" penalties.

56. The adoption of such an overly broad definition appears to be in violation of the principle of legality and carries the potential for arbitrary and discriminatory enforcement.

E. Transitional justice

1. Law on Transitional Justice

57. On 2 December 2013, the General National Congress promulgated Law 29 of 2013 on Transitional Justice, which repealed a previous law on transitional justice. The new law provided for the establishment of a new Fact-finding and Reconciliation Commission and a framework for reparations, and emphasized the importance of criminal accountability. It further provided for a deadline of 90 days from its promulgation — subsequently extended by another 30 days —, whereby those still detained in relation to the 2011 conflict would be either charged or released. At the time of writing there had been little progress in that process.

58. UNSMIL/OHCHR provided advice to the authorities on the implementation of the law, as well as extensive comments on the draft law, some of which were incorporated in the final draft. UNSMIL/OHCHR also organized several meetings with civil society groups to facilitate their interaction with the Commission and other transitional justice bodies.

2. Truth seeking

59. In March 2014, the General National Congress formed a four-person committee to establish a roster of candidates for the Board of the Fact-finding and Reconciliation Commission. On 1 April, the committee issued a public advertisement for candidates. The committee also participated in a national television programme to explain the selection process and how transitional justice principles may be applied in the Libyan context. Due to the political volatility and announcement of elections, the committee did not complete its work and the Board has yet to be appointed.

60. UNSMIL/OHCHR advised the Congress on international standards and best practice relating to criteria for and selection of the Board. UNSMIL/OHCHR further informed civil society organizations about the invitation for applications for membership of the Board, and facilitated discussions between civil society organizations and the committee.

3. Reparations

61. There was no progress on the establishment of a Victims Compensation Fund, as provided for in the Law on Transitional Justice. However, other bodies established in 2014 provide for reparations to victims of serious human rights violations. Law No. 1 of 2014 on the Martyrs and Missing of the 17 February Revolution provides, inter alia, for symbolic and material reparations, such as commemoration efforts, monthly grants and medical care to victims (see para. 71 below for further information).

62. In February 2014, the Council of Ministers issued Decree No. 119 of 2014, Addressing the Conditions of Victims of Sexual Violence, which provides for the establishment of a specialized committee to identify victims under the former regime and during the 2011 armed conflict. The committee is to recommend reparations, such as a monthly stipend, health care, a mechanism to grant legal status to children born of rape and legal aid for victims to seek accountability. In March, the Minister of Justice passed a decree to appoint members of the specialized committee and subsequently appointed the Head of the compensation fund. The fund itself is yet to function.

63. UNSMIL/OHCHR provided advice to the authorities on best practices in the design and delivery of reparations programmes, and worked with civil society to facilitate their engagement on reparations with officials. It also provided advice on establishing an effective complaint mechanism within the police or the Ministry of Health, as well as drafting legislation which comprehensively addresses the issue.

4. Criminal justice

64. On 24 March 2014, the Court of Assize in Tripoli began hearing the trial of Saif al-Islam Qadhafi, Abdullah al-Senussi and 35 other members of the former regime, all charged with crimes related to the 2011 conflict.

65. UNSMIL/OHCHR has been monitoring the trial, attending many sessions and meeting with the Prosecutor and defence counsel. On one occasion, a staff member seeking to attend a session was temporarily detained and his personal effects were confiscated. The authorities subsequently apologized for the incident. UNSMIL/OHCHR also conducted interviews with all defendants held in detention. The majority are held in Al-Hadhba Correction and Rehabilitation Institution, in Tripoli, where the Court is based. Mr. Qadhafi remained held in Zintan at the time of writing, while the eight defendants who had been held in Misrata were moved to Tripoli in November 2014. Mr. Qadhafi and other defendants held outside of Tripoli were connected by video-link to some sessions of the trial, following the adoption of Law No. 7 of 2014, which amended the Code of Criminal Procedure to permit such a modality to link defendants to a courtroom. The law established that a hearing shall be considered public if broadcast live on television.

66. A trial session scheduled for August 2014 was postponed due to the fighting in Tripoli, and the trial resumed in October, although Saif al-Islam Qadhafi was not connected by video-link and has not participated in trial sessions since.

67. While all the defendants were eventually represented by defence counsel during the trial sessions (either retained by their families or appointed by the court), the defence counsel for Messrs. al-Senussi and Qadhafi have changed several times and Mr. Qadhafi is no longer represented by a lawyer. Defence counsels reported difficulties in having full and timely access to case material and in meeting their clients in private.

68. UNSMIL/OHCHR is concerned that the trial risks falling short of basic international standards as reflected in the International Covenant on Civil and Political Rights. The prosecution presented its case in June 2014, in less than one hour, without calling any witnesses. At the time of writing, the court was asking defence counsel to present their case and was reportedly trying to curtail the number of witnesses per defendant to two or three. UNSMIL/OHCHR has repeatedly stressed that the trial should take place in compliance with international human rights standards, including in relation to the importance of proper legal representation for all defendants and for unfettered access by defence counsel to case files and their clients in confidence. If the trial continues to proceed in this way, it will not meet international standards. It will also constitute a missed historical opportunity to publicly disclose and scrutinize crimes committed under the former regime.

5. Proceedings before the International Criminal Court

69. Following the Security Council's referral of the situation in Libya to the Prosecutor of the International Criminal Court in 2011, the Court issued arrest warrants and requested the transfer of Abdullah al-Senussi and Saif al-Islam Qadhafi to The Hague. The Libyan authorities challenged the admissibility of the cases. On 21 May 2014, the Appeals Chamber confirmed that the case of Mr. Qadhafi was admissible before the Court, in part because it found that he was not in State custody. In contrast, in July 2014, the Appeals Chamber decided that Abdullah al-Senussi's case was inadmissible before the Court as it was subject to ongoing domestic proceedings and that Libya was willing and able to carry out such investigation; also he was considered to be in State custody. On 10 December, the Pre-Trial Chamber found that Libya had failed to surrender Mr. Qadhafi to the Court, and referred the matter to the United Nations Security Council.

70. To date, both Saif al-Islam Qadhafi and Abdullah al-Senussi have been unable to access legal counsel representing them before the International Criminal Court. In her briefing to the Security Council on 12 November 2014, the Prosecutor noted that the "ongoing violence and alleged threats to judges, prosecutors and lawyers do not augur well for a fair trial". She further noted that she would assess options, "including whether to apply for a review of the judge's decision upholding Libya's request that the case against Mr. Al-Senussi be tried in Libya".

71. On 25 July 2014, the Prosecutor issued a statement that she "[would] not hesitate to investigate and prosecute those who commit crimes under the Court's jurisdiction in Libya, irrespective of their official status or affiliation."

6. Law on Political and Administrative Isolation

72. The authorities have undertaken limited or no vetting of new members of the armed forces, law enforcement, judiciary or Judicial Police. In contrast, extensive measures targeting those affiliated with the Qadhafi regime have been applied. Law No. 13 of 2013 on Political and Administrative Isolation lists a wide range of political, administrative and other positions under the Qadhafi regime, as well as types of affiliation and conduct, as a basis for excluding individuals from public life for 10 years. It contains criteria which are

vague, far-reaching and disproportionate and thus likely to violate the right to public service of those affected. UNSMIL/OHCHR had advised the General National Congress on international standards for vetting State institutions and the risks of exclusionary measures, but that advice was largely not taken into account.

73. The Supreme Court considered seven challenges to the constitutionality of the law, presented on both substantive and procedural grounds. The last session was on 26 June 2014, whilst members of armed groups protested outside the court. No further sessions have been held since and no decision has been rendered.

7. Missing persons

74. More than 2,000 people from all sides of the conflict are reported to have gone missing during the 2011 revolution. At the time of writing, there had been no progress in the implementation of Law No. 1 of 2014 on the Care for Martyrs and Missing Persons of the 17 February Revolution. The law provides for the establishment of a General Commission for Tracing and Identifying Missing Persons and benefits to the families of those killed or missing in the context of the revolution. However, it explicitly excludes from such benefits the families of those who opposed the revolution. The Commission is yet to be set up.

F. National institutions

1. The General National Congress and the House of Representatives

75. In contrast to the 2012 legislative elections for the General National Congress, the 2014 electoral law in relation to elections for the 200-member House of Representatives excluded the participation of political parties, with 1,714 candidates standing in their personal capacity. A special provision ensured that a minimum of 32 seats would be taken up by women. Approximately 40 per cent of the 1.5 million registered Libyans voted on 25 June 2014. UNSMIL/OHCHR provided technical advice to the Congress specifically on the implementation of the Law on Transitional Justice, but the growing political crisis and the escalation in violence precluded the provision of further assistance to the Congress and the beginning of a programme of assistance to the House.

2. Constitution Drafting Assembly

76. The elections for the Constitution Drafting Assembly took place on 20 February 2014. A special provision held that six of the 60 available seats would be taken up by women; however, due to security complications in a multi-district area in the east of the country, one of the six seats ended up being seated by a man. As a result of the boycott by the Amazigh community and the security situation in Derna, which halted polling there, four seats comprising of two from Derna and two reserved for the Amazigh community remain unfilled. On 21 April, the Assembly held its first session in Al-Baida.

77. Amendment 3 of the Constitutional Declaration mandated the Assembly to draft the constitution within 120 days. The Assembly publicly committed to completing a draft Constitution by the end of December 2014. However, at the time of writing, it was expected to take longer. The Constitution is to be adopted by a referendum.

78. A committee of the Assembly was established to address human rights and fundamental freedoms in the Constitution. UNSMIL/OHCHR has identified international experts on standby to advise the Assembly on human rights matters, but at the time of writing, the Assembly had not specified the modalities of the assistance it wished to receive.

3. National human rights institution

79. The National Council for Civil Liberties and Human Rights was established in December 2011 and began functioning in January 2013. UNSMIL/OHCHR deployed a dedicated adviser, in December 2013, to provide sustained technical assistance to the Council for four months. The adviser delivered training activities on relevant international norms and standards, and provided advice on organizational structure and working methods to improve the effectiveness of day-to-day operations.

80. In March 2014, UNDP, in partnership with UNSMIL/OHCHR, organized a workshop for civil society organizations working on issues related to human rights, and the Council, UNDP and UNSMIL/OHCHR organized a seminar with civil society organizations and members of the Human Rights Committee of the General National Congress to discuss a national plan of action on human rights. The work stalled following the June 2014 elections for the House of Representatives.

81. UNSMIL/OHCHR received reports of threats and intimidation targeting staff members of the Council. In October 2014, a staff member left Tripoli after receiving a threatening phone call from someone claiming to be affiliated with Libya Dawn. That same month, armed men sought to question senior Council representatives who were not in the office at the time. A group of armed men claiming to be associated with Libya Dawn also visited the premises of the Council requesting the handover of keys and official stamps. Council staff refused to comply. Witnesses reported that armed men in military uniform arrived at the Council headquarters on 9 November 2014, locked the doors and publicly proclaimed that the Council was being closed by Libya Dawn, and that anybody attempting to re-open the premises would be arrested. At the time of writing, the Council was not functioning.

IV. Conclusion and recommendations

82. **The actions taken by all parties involved in the current violence have led to numerous grave abuses of human rights and violations of international human rights and humanitarian law.**

83. **The High Commissioner reiterates his appeal to all parties to the conflict to end hostilities and, through an inclusive political dialogue, to put in place a framework to build a State based on respect for human rights and rule of law. He accordingly recommends that:**

(a) All armed groups comply fully with international humanitarian law, specifically with the principles of distinction, proportionality and precaution in attack. In particular, they must immediately cease all attacks on civilians and must take steps to protect civilians and fighters hors de combat. All armed groups must also desist from violations of international human rights law and humanitarian law and abuses of human rights, and remove from active duty those suspected of such actions;

(b) The Libyan authorities hold accountable, in accordance with international standards, all parties responsible for violations of international human rights and humanitarian law and abuses of human rights.

84. **Whilst the ongoing violence has significantly impacted the rule of law and effective running of key institutions, some institutions still operate. There is a need for further technical assistance to enhance their effectiveness and compliance with international human rights standards. Accordingly, whilst cognizant of the major security challenges, the High Commissioner recommends that the Libyan authorities, through capacity-building and technical assistance support:**

(a) Urgently address the situation of persons deprived of their liberty. Those detained in connection with the recent conflict, as well as those held since the 2011 conflict, must be released or handed over to the justice system. All detention facilities must be handed over from armed groups to the effective control of the State. Authorities must investigate all allegations of torture and other ill-treatment, and those found responsible must be removed from active duty and brought to justice. Safeguards against torture and other ill-treatment should also be put in place;

(b) Develop a comprehensive strategy to address the issue of displaced persons. Those displaced — including since 2011 — must be allowed to return to their homes in safety and dignity. In the interim, they must be given protection and humanitarian assistance, in accordance with the Guiding Principles on Internal Displacement;

(c) Resume building State institutions, in particular the armed forces, law enforcement and the judiciary, as soon as feasible. Enhance security for prosecutors, judges and the courts as a priority to strengthen the rule of law. Establish a fair and transparent vetting and recruitment process for the Judicial Police, and ensure that prison officials are provided with adequate resources and training to effectively manage their facilities, in line with international human rights standards;

(d) Ensure full support to the Constitution Drafting Assembly and ensure an inclusive and consultative drafting process, leading to a constitution that is fully compliant with international human rights standards, safeguarding dignity, non-discrimination, equality and human rights for all. National legislation should also be fully reviewed to ensure its compliance with international human rights standards, and revised accordingly, with priority to the Penal Code and the Code of Criminal Procedure;

(e) Review and strengthen legal and policy protections which guarantee the rights of women, minorities, children, migrants, refugees and asylum seekers, and establish measures to facilitate greater access to justice for those groups;

(f) Bring the transitional justice process back on track, with priority to the appointment of qualified and independent members of the Board of the Fact-finding and Reconciliation Commission, taking into account fair gender representation. The Law on Political and Administrative Isolation should be revised to ensure that vetting criteria are precise, proportionate and fair. The law on missing persons should be revised to ensure that benefits extend to all victims, regardless of affiliation, and an independent and impartial commission on missing persons established;

(g) Ensure that all those responsible for human rights violations and abuses are brought to justice, with all the guarantees of a fair trial and due process, including the ability to speak freely with counsel in confidence, and adequate facilities and resources to conduct their defence. All necessary measures should be taken to ensure a safe environment, free of intimidation, for any trial;

(h) Cooperate fully with the International Criminal Court by assisting its investigations and complying with its rulings;

(i) Take all necessary steps to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and withdraw reservations to the Convention on the Elimination of All Forms of Discrimination against Women.

85. **The High Commissioner further urges Member States of the Human Rights Council to remain seized of the situation in Libya, and proposes to present an oral report on the human rights situation in Libya during the twenty-ninth session of the**

Council and a written report during the thirty-first session, in order to keep Member States actively apprised of the rapidly developing situation.